

DRAFT Regulations governing non-Chinook salmon bycatch as they likely will appear if BSAI Amendment 91 (Chinook salmon bycatch management) is approved:

Current regulations approved under Amendment 84 (no changes needed in Amd 91)

§ 679.21(e)(1)

(vii) Non-chinook salmon. The PSC limit of non-chinook salmon caught by vessels using trawl gear during August 15 through October 14 in the CVOA is 42,000 fish.

§ 679.21(e)(7)

(vii) Chum salmon. If the Regional Administrator determines that 42,000 non-chinook salmon have been caught by vessels using trawl gear during the period August 15 through October 14 in the CVOA, defined under § 679.22(a)(5) and in Figure 2 to this part, NMFS will prohibit fishing for pollock for the remainder of the period September 1 through October 14 in the Chum Salmon Savings Area as defined in Figure 9 to this part.

Regulations as they may be revised under Amendment 91 (slight rewording to apply exemption only to closure of the Chum Salmon Savings Area and to remove references in current regulations to Chinook)

§ 679.21(e)(7)

(ix) Exemptions. Trawl vessels participating in directed fishing for pollock and operating under a non-Chinook salmon bycatch reduction ICA approved by NMFS under paragraph (g) of this section are exempt from closures in the Chum Salmon Savings Area described at paragraph (e)(7)(vii) of this section. See also § 679.22(a)(10) and Figure 9 to part 679.

**DRAFT PROPOSED REVISIONS TO
679.21(g) under AMD 91 PROPOSED RULE, as
of 10/16/09)**

**(g) Bering Sea (BS) Non-Chinook Salmon
Bycatch Management.**

**(1) Requirements for the non-Chinook
salmon bycatch reduction intercooperative agreement
(ICA).**

(i) Application. The ICA representative identified in paragraph (g)(2)(i)(B) of this section must submit a signed copy of the proposed non-Chinook salmon bycatch reduction ICA, or any proposed amendments to the ICA, to NMFS at the address in paragraph (b)(6) of this section.

(ii) Deadline. For any ICA participant to be exempt from closure of the Chum Salmon Savings Area as described at paragraph (e)(7)(ix) of this section and at § 679.22(a)(10), the ICA must be filed in compliance with the requirements of this section, and approved by NMFS. The proposed non-Chinook salmon bycatch reduction ICA or any amendments to an approved ICA must be received by NMFS by December 1 of the year before the year in which the ICA is proposed to be effective. Exemptions from closure of the Chum Salmon Savings Area will expire upon termination of the initial ICA, expiration of the initial ICA, or if superseded by a NMFS-approved amended ICA.

(2) Information requirements.

The ICA must include the following provisions:

(i) Participants.

(A) The names of the AFA cooperatives and CDQ groups participating in the ICA. Collectively, these groups are known as parties to the ICA. Parties to the ICA must agree to comply with all provisions of the ICA.

(B) The name, phone number, and business address of the ICA representative.

(C) The ICA also must identify one entity retained to facilitate vessel bycatch avoidance behavior and information sharing.

(D) The ICA must identify at least one third party group. Third party groups include any

organizations representing western Alaskans who depend on chum salmon and have an interest in chum salmon bycatch reduction but do not directly fish in a groundfish fishery.

(ii) The names, Federal fisheries permit numbers, and USCG vessel identification numbers of vessels subject to the ICA;

(iii) Provisions that dictate non-Chinook salmon bycatch avoidance behaviors for vessel operators subject to the ICA, including:

(A) Initial base rate. The initial “B” season non-Chinook salmon base rate shall be 0.19 non-Chinook salmon per metric ton of pollock.

(B) Inseason adjustments to the non-Chinook base rate calculation. Beginning July 1 of each fishing year, and on each Thursday during “B” season, the “B” season non-Chinook base rate shall be recalculated. The recalculated non-Chinook base rate shall be the three week rolling average of the “B” season non-Chinook bycatch rate for the current year. The recalculated base rate shall be used to determine bycatch avoidance areas.

(C) ICA Chum Salmon Savings Area notices. On each Thursday and Monday after June 10 of each year for the duration of the pollock “B” season, the entity identified under paragraph (g)(2)(i)(C) of this section must provide notice to the parties to the ICA and NMFS identifying one or more areas designated as “ICA Chum Savings Areas” by a series of latitude and longitude coordinates. The Thursday notice of the ICA Chum Salmon Savings Area designations must be effective from 6 p.m. Alaska local time the following Friday through 6 p.m. Alaska local time the following Tuesday. The Monday notice must be effective from 6 p.m. Alaska local time the following Tuesday through 6 p.m. Alaska local time the following Friday. For any chum salmon savings area notice, the maximum total area closed must be at least 3,000 square miles.

(D) Fishing restrictions for vessels assigned to tiers as described at paragraph (g)(2)(iii)(E) of this section. For vessels assigned to Tier 3, the ICA chum savings area closures announced on Thursdays must be closed to directed fishing for pollock, including pollock CDQ, for seven days. For vessels assigned to Tier 2, the ICA chum savings area closures announced on Thursdays must be closed through 6 p.m. Alaska local time on the following Tuesday. Vessels assigned to Tier 1 may operate in any area designated as an ICA chum savings area.

(E) Cooperative tier assignments. Initial and subsequent base rate calculations must be based on each cooperative's pollock catch for the prior two weeks and the associated bycatch of non-Chinook salmon taken by its members. Base rate calculations shall include non-Chinook salmon bycatch and pollock caught in both the CDQ and non-CDQ pollock directed fisheries. Cooperatives with non-Chinook salmon bycatch rates of less than 75 percent of the base rate shall be assigned to Tier 1. Cooperatives with non-Chinook salmon bycatch rates of equal to or greater than 75 percent, but less than or equal to 125 percent of the base rate shall be assigned to Tier 2. Cooperatives with non-Chinook salmon bycatch rates of greater than 125 percent of the base rate shall be assigned to Tier 3. Bycatch rates for Chinook salmon must be calculated separately from non-Chinook salmon, and cooperatives must be assigned to tiers based on non-Chinook salmon bycatch.

(iv) Internal monitoring and enforcement provisions to ensure compliance of fishing activities with the provisions of the ICA. The ICA must include provisions allowing any party of the ICA to bring civil suit or initiate a binding arbitration action against another for breach of the ICA. The ICA must include minimum annual uniform assessments for any violation of savings area closures of \$10,000 for the first offense, \$15,000 for the second offense, and \$20,000 for each offense thereafter;

(v) Provisions requiring the parties to conduct an annual compliance audit, and to cooperate fully in such audit, including providing information required by the auditor. The compliance audit must be conducted by a non-party entity, and each party must have an opportunity to participate in selecting the non-party entity. If the non-party entity hired to conduct a compliance audit discovers a previously undiscovered failure to comply with the terms of the ICA, the non-party entity must notify all parties to the ICA of the failure to comply and must simultaneously distribute to all parties of the ICA information used to determine the failure to comply occurred and must include such notice(s) in the annual report described in paragraph (g)(4) of this section.

(vi) Provisions requiring data dissemination in certain circumstances. If the entity retained to facilitate vessel bycatch avoidance behavior and information sharing under paragraph (g)(2)(i)(C) of this section determines that an apparent violation of an ICA chum salmon savings area closure has occurred, that entity must promptly notify the Board of Directors of the cooperative to which the vessel involved belongs. If this Board of Directors fails to assess a minimum uniform assessment within 180

days of receiving the notice, the information used by the entity to determine if an apparent violation was committed must be disseminated to all parties to the ICA.

(3) NMFS review of the proposed ICA and amendments. NMFS will approve a proposed or amended IPA if it meets all the requirements specified in this paragraph (g) of this section. If NMFS disapproves a proposed ICA, the ICA representative may resubmit a revised ICA or file an administrative appeal as set forth under the administrative appeals procedures described at § 679.43.

(4) Annual Report. The ICA representative must submit a written annual report to the Council at the address specified in §679.61(f). The Council will make the annual report available to the public.

(i) Submission deadline. The annual report must be submitted to the Council by April 1 of each year following the year in which the ICA is first effective. Annual reports must be postmarked by the submission deadline or received by a private courier service by the submission deadline.

(ii) Information requirements. The annual report must contain the following information:

(A) an estimate of the number of salmon avoided as demonstrated by the movement of fishing effort away from chum salmon savings areas, and

(B) the results of the compliance audit required at § 679.21(g)(2)(v).